

REMARKS

Claims 1-68 now remain pending in the application, with claims 11-23, 34-46, 48 and 49 withdrawn from consideration because of a restriction issued by the Examiner.

35 USC 101 Rejection of Claims 1-68

Claims 1-68 were rejected under 35 USC 101 as allegedly not being drawn to statutory subject matter. The Examiner now arrived at such a conclusion after having reviewed the claims over numerous Office Actions and without being initiated by any amendments by Applicants.

Claims 11-23, 34-46, 48 and 49 were previously withdrawn from consideration because of a restriction requirement. However, the response herein to the 35 USC 101 rejection of claims 1-68 applies to all of claims 1-68.

In particular, the Examiner alleged that claim 47 recites a software development kit that is merely software code and is not statutory since it is not encoded on a computer readable storage medium. The Applicants are confused in that the Examiner suggests to amend claim 47 to recite a software development kit encoded on a computer readable storage medium to overcome the 35 USC 101 rejection and then later rejects claim 47 as being non-statutory for another reason, i.e., would amending claim 47 as suggested by the Examiner overcome the 35 USC 101 rejection? Nevertheless, claim 47 is amended herein as suggested by the Examiner to overcome the 35 USC 101 rejection to recite a software development kit that is encoded on a computer readable data storage medium.

In particular, the Examiner alleged that claims 62 and 67 are not limited to tangible embodiments of the invention, with Applicant's claimed features using means-plus-function language which encompasses non-tangible embodiments of the invention. The Applicants respectfully disagree.

Claims 62 and 67 respectively recite "means for providing registration of a first intelligent messaging network server", "means for providing connectivity of said first intelligent messaging network server", "means for

encapsulating communication”, “means for providing an intelligent messaging network server”, and “means for using a transport protocol”. All of the claimed means recited in claims 62 and 67 can be implemented in hardware, even if such hardware uses some type of software to perform its function. Thus, the means-plus-function language recited in claims 62 and 67 is directed toward processing hardware to perform the recited functions. Processing hardware is statutory subject matter that falls under 35 USC 101’s recitation of “any new and useful machine”.

In particular, the Examiner alleged that claims 1-68 are drawn to subject matter which is not eligible for patent protection. The Examiner cites AT&T, 172 F.3d at 1358-59, 50 USPQ2d at 1452 for support for the allegation that claims 1-68 are directed toward non-statutory subject matter. For example, the Examiner alleged that claim 1 results in a first server, a second server and a transport protocol utilized between them, with a server merely being a process executed by a processor. The Examiner alleged that there is no tangible result to the claimed invention, with a process not being tangible.

35 USC 101 reads “Whoever invents or discovers a new and useful process ... may obtain a patent thereof”. Thus, 35 USC 101 DOES allow for a process to be patented.

Moreover, AT&T held that claims drawn to a long-distance telephone billing process containing mathematical algorithms were held to be directed to patentable subject matter because “the claimed process applies the Boolean principle to produce a useful, concrete, tangible result without preempting other uses of the mathematical principle.” AT&T Corp. v. Excel Communications, Inc., 172 F.3d 1352, 1358, 50 USPQ2d 1447, 1452 (Fed. Cir. 1999); see MPEP section 2106. MPEP section 2106 also cites *State Street*, 149 F.3d at 1373, 47 USPQ2d at 1601 for holding that “[T]ransformation of data, representing discrete dollar amounts, by a machine through a series of mathematical calculations into a final share price, constitutes a practical application of a mathematical algorithm, formula, or calculation, because it produces ‘a useful, concrete and tangible result’ -- a final share price momentarily

fixed for recording and reporting purposes and even accepted and relied upon by regulatory authorities and in subsequent trades."

Claims 1-68 do not apply Boolean principles in any way, as used in *AT&T*. More applicable to Applicants' claims is *State Street's* analysis. Claim 1 provides a tangible result of registering a first intelligent messaging network server, a tangible result of connecting a first intelligent messaging network server to a second intelligent messaging network server, and a tangible result of encapsulating communication between a first intelligent messaging network server and a second intelligent messaging network server. Moreover, claim 1 recites a transport protocol used by a code segment having specific characteristics. Together the claimed code segments of claim 1 have a benefit of, as described in Applicants' specification as offering "features for communicating such messages over wireless networks efficiently, without requiring significant bandwidth, a valuable resource in wireless networks". Thus, claim 1, and ALL of claims 1-68, are statutory under *State Street's* analysis since they provide for "[T]ransformation of data ... by a machine" and produce "a useful, concrete and tangible result".

Moreover, the Examiner alleged that "it is well known that a server is merely a process executed on a processor" and "there is no tangible result to the claimed invention (i.e. a process is not tangible).

As discussed above, 35 USC 101 provides for patenting of a process. Moreover, a server entails much more than simply a process executed on a processor. A server generally entails, e.g., a processor, some type of long term storage, some type of short term storage, a motherboard to interconnect the hardware, a network adapter to connect to a network, etc., etc. Thus, a server is **NOT** simply a process executed on a processor, as the Examiner alleged, but is a tangible piece of hardware, made up of many pieces of hardware, that execute some type of operating system.

The Examiner is respectfully requested to review the Patent & Trademark's most resent guidelines directed toward analysis of software applications in view of the *AT&T's* and *State Street's* court decisions. If the

Examiner continues to hold that claims 1-68 are directed toward non-statutory subject matter under 35 USC 101, the Examiner's supervisor David Wiley is respectfully requested to call Applicants to discuss the 35 USC 101 rejection of claims 1-68.

Claims 1-6, 8, 24-29, 31, 47 and 50-62 over Matsuda in view of Atkinson

In the Office Action, claims 1-6, 8, 24-29, 31, 47 and 50-62 were rejected under 35 U.S.C. §103(a) as allegedly being obvious over U.S. Patent Application Publication No. 2002/0133573 to Matsuda et al. ("Matsuda") in view of U.S. Patent No. 5,511,122 to Atkinson et al. ("Atkinson"). The Applicants respectfully traverse the rejection.

Claims 1-6, 8, 24-29, 31, 47 and 50-62 recite a system and method relying on intelligent messaging network servers that use a transport protocol that provides for message segmentation and reassembly, message retries, message duplication detection, and message ACK and NACK service without relying on either a client and server.

The Examiner acknowledged that Matsuda fails to disclose intelligent messaging network servers that use a transport protocol that provides for at least one of message segmentation and reassembly without relying on either a client and server. However, the Examiner alleged that Atkinson allegedly discloses such a feature in Fig. 3, at items 18 and 32 and that it would have been obvious to modify Matsuda with such a feature to arrive at the claimed features. The Applicants respectfully disagree.

Atkinson's step 18 of Fig. 3 disclose a subnet that processes data into packets or fragments which are subnetwork specific (See col. 9, lines 9-11). Step 32 performs transmission from a gateway of a subnetwork to a second gateway of a second subnetwork (See Atkinson, col. 9, lines 42-46). In most cases currently, reassembly only occurs at the destination node, with intermediate nodes such as routers or gateways do not currently pay this cost (See Atkinson, col. 11, lines 46-48).

Thus, Atkinson appears to disclose a subnet that processes data into packets. However, Atkinson fails to disclose or suggest any other network overhead functions being performed by the subnet with packet re-assembly being performed by a destination node, i.e., a client or a server. Thus, Atkinson still relies on a destination node to re-assemble packets. Atkinson fails to disclose or suggest a system and method relying on intelligent messaging network servers that use a transport protocol that provides for message segmentation and reassembly, message retries, message duplication detection, and message ACK and NACK service without relying on either a client and server, as recited by claims 1-6, 8, 24-29, 31, 47 and 50-62.

Matsuda in view of Atkinson would still fail to disclose or suggest an intelligent messaging network server that uses a transport protocol that provides for message segmentation and reassembly, message retries, message duplication detection, and message ACK and NACK service without relying on either a client and server, as recited by claims 1-6, 8, 24-29, 31, 47 and 50-62.

A benefit of an intelligent messaging network server that uses a transport protocol that provides for message segmentation and reassembly, message retries, message duplication detection, and message ACK and NACK service without relying on either a client and server is, e.g., reducing overhead associated with a client and a server. Conventionally, clients and servers have the burden of message segmentation and reassembly, message retries, message duplication detection, and message ACK and NACK service. However, removing burdens from clients and servers eliminates network traffic associated with sending messages to clients and servers to perform such functions. The cited prior art fails to disclose or suggest the claimed features having such benefits.

Accordingly, for at least all the above reasons, claims 1-6, 8, 24-29, 31, 47 and 50-62 are patentable over the prior art of record. It is therefore respectfully requested that the rejection be withdrawn.

Claims 7, 9, 10, 30, 32 and 33 over Matsuda in view of Bell

In the Office Action, claims 7, 9, 10, 30, 32 and 33 were rejected under 35 U.S.C. §103(a) as allegedly being obvious over Matsuda in view of U.S. Patent No. 6,044,081 to Bell et al. ("Bell"). The Applicants respectfully traverse the rejection.

Claims 7, 9, 10, 30, 32 and 33 are dependent on claims 1 and 24 respectively, and are allowable for at least the same reasons as claims 1 and 24.

Claims 7, 9, 10, 30, 32 and 33 recite a system and method relying on intelligent messaging network servers that use a transport protocol that provides for message segmentation and reassembly, message retries, message duplication detection, and message ACK and NACK service without relying on either a client and server.

The Examiner acknowledged that Matsuda fails to disclose or suggest a system and method relying on intelligent messaging network servers that use a transport protocol that provides for at least one of message segmentation and reassembly, message retries, message duplication detection, and message ACK and NACK service without relying on either a client and server, as recited by claims 7, 9, 10, 30, 32 and 33.

The Office Action relies on Bell to allegedly make up for the deficiencies in Matsuda to arrive at the claimed features. The Applicants respectfully disagree.

Bell appears to disclose a system and method for communicating a private network signaling message over a packet network and bridges for communicating a MAC layer frame over an isochronous channel (See Bell, col. 1, lines 34-38). Moreover, an isochronous signaling frame can be communicated over a nonisochronous network (See Bell, col. 1, lines 39-40). Telephony protocols and computer network protocols are cross-translated for packet based signaling (See Bell, col. 8, lines 38-46).

Thus, Bell discloses use of a computer network protocol. However, Bell simply discloses cross-translating a conventional computer network protocol to a telephony protocol. Bell fails to disclose or suggest a system and method

relieving burdens conventionally associated with clients and servers executing TCP services, i.e., relying on intelligent messaging network servers that use a transport protocol that provides for message segmentation and reassembly, message retries, message duplication detection, and message ACK and NACK service without relying on either a client and server, as recited by claims 7, 9, 10, 30, 32 and 33

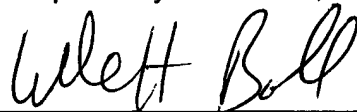
Thus, Matsuda in view of Bell would still fail to disclose or suggest a system and method relying on intelligent messaging network servers that use a transport protocol that provides for message segmentation and reassembly, message retries, message duplication detection, and message ACK and NACK service without relying on either a client and server, as recited by claims 7, 9, 10, 30, 32 and 33.

Accordingly, for at least all the above reasons, claims 7, 9, 10, 30, 32 and 33 are patentable over the prior art of record. It is therefore respectfully requested that the rejection be withdrawn.

Conclusion

All objections and rejections having been addressed, it is respectfully submitted that the subject application is in condition for allowance and a Notice to that effect is earnestly solicited.

Respectfully submitted,



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